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6

7 Attorneys for Defendants

8 FREMONT GENERAL CORPORATION,

9 FREMONT GENERAL CREDIT CORPORATION,

10 and FREMONT INVESTMENT & LOAN

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN FRANCISCO DIVISION

14

15 MATTHEW SCHEID and MELTON ) Case No. C07-06063 (CRB)

16 MCCLANAHAN, JR., on behalf of ) Assigned for all purposes to:

17 themselves and others similarly situated,) Hon. Charles R. Breyer

18 Plaintiffs, ) **ANSWER TO COMPLAINT**

19 v. )

20 FREMONT GENERAL )

21 CORPORATION, a corporation, )

22 FREMONT GENERAL CREDIT )

23 CORPORATION, a corporation, and )

24 FREMONT INVESTMENT & LOAN, )

25 a corporation, )

26 Defendants. )

27 \_\_\_\_\_)

28

29 Defendants Fremont General Corporation, Fremont General Credit

30 Corporation and Fremont Investment & Loan (collectively, "Defendants"), hereby

31 answer the allegations of the Complaint in this action.

32

33

1 The numbered paragraphs below correspond to the paragraph numbers  
2 contained in Plaintiffs' Complaint. The headings used herein match those chosen by  
3 Plaintiffs; they are included for ease of reference only and constitute no admission or  
4 averment whatsoever.

5

6 I. INTRODUCTION

7       1. Answering paragraph 1 of the Complaint, Defendants admit that  
8 plaintiff Matthew Scheid was employed by defendant Fremont Investment & Loan  
9 from September, 2004 to April, 2007. Defendants admit that plaintiff Melton  
10 McClannahan, Jr. was employed by defendant Fremont Investment & Loan from  
11 June, 2004 to April, 2007. To the extent the remaining allegations of paragraph 1 of  
12 the Complaint consist of statements by Plaintiffs about their intentions in filing suit,  
13 the relief they seek, or their legal conclusions, Defendants lack knowledge and  
14 information sufficient to form a belief about the truth thereof, and on that basis deny  
15 the same. Except as expressly admitted, denied or averred herein, Defendants deny  
16 each and every allegation.

17        2.     Answering paragraph 2 of the Complaint, to the extent it consists of  
18 statements by Plaintiffs about their intentions in filing suit, the relief they seek, or  
19 their legal conclusions, Defendants lack knowledge and information sufficient to  
20 form a belief about the truth thereof, and on that basis deny the same. Except as  
21 expressly admitted, denied or averred herein, Defendants deny each and every  
22 allegation.

23           3.     Answering paragraph 3 of the Complaint, Defendants deny each and  
24     every allegation.

25           4. Answering paragraph 4 of the Complaint, Defendants deny each and  
26 every allegation.

27       5. Answering paragraph 5 of the Complaint, Defendants deny each and  
28 every allegation.

1       6. Answering paragraph 6 of the Complaint, Defendants deny each and  
2 every allegation.

3       7. Answering paragraph 7 of the Complaint, Defendants deny each and  
4 every allegation.

5       8. Answering paragraph 8 of the Complaint, Defendants deny each and  
6 every allegation.

7       9. Answering paragraph 9 of the Complaint, Defendants deny each and  
8 every allegation.

9       10. Answering paragraph 10 of the Complaint, Defendants deny each and  
10 every allegation.

11

12                   II. JURISDICTION

13       11. Answering paragraph 11 of the Complaint, Defendants admit that  
14 Defendant Fremont General Corporation is a Nevada corporation. Except as  
15 expressly so admitted, Defendants deny each and every allegation.

16       12. Answering paragraph 12 of the Complaint, Defendants admit that this  
17 court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because  
18 Plaintiffs' alleged claims arise under the Fair Labor Standards Act ("FSLA"), 29  
19 U.S.C. § 201 *et seq.* Except as so expressly admitted, Defendants deny each and  
20 every allegation.

21

22                   III. VENUE

23       13. Answering paragraph 13 of the Complaint, Defendants admit that venue  
24 is proper in this District, although not necessarily for the reasons asserted by  
25 Plaintiffs. Except as so expressly admitted, Defendants deny each and every  
26 allegation.

27       14. Answering paragraph 14 of the Complaint, Defendants admit that this  
28 case is properly assigned to the San Francisco/Oakland Division of the Northern

1 District of California, although not necessarily for the reasons asserted by Plaintiffs.  
2 Except as so expressly admitted, Defendants deny each and every allegation.

3

## IV. PARTIES

5       15. Answering paragraph 15 of the Complaint, Defendants lack knowledge  
6 and information sufficient to form a belief as to the truth of the allegation of  
7 Plaintiff Scheid's current residence, and on that basis deny the same. Defendants  
8 admit that Plaintiff Scheid was employed by Defendant Fremont Investment & Loan  
9 as an Account Executive in Concord, California from September, 2004 to April,  
10 2007. Except as so expressly admitted or denied, Defendants deny each and every  
11 allegation.

12        16. Answering paragraph 16 of the Complaint, Defendants lack knowledge  
13 and information sufficient to form a belief as to the truth of the allegation of  
14 Plaintiff McClanahan's current residence, and on that basis deny the same.  
15 Defendants admit that Plaintiff McClanahan was employed by Defendant Fremont  
16 Investment & Loan as an Account Executive in Concord, California from June, 2004  
17 to April, 2007. Except as so expressly admitted or denied, Defendants deny each  
18 and every allegation.

17. Answering paragraph 17 of the Complaint, Defendants admit that  
18 defendant Fremont Investment & Loan is a California corporation with its principal  
19 place of business in Brea, California. Defendants admit that Defendant Fremont  
20 Investment & Loan is a wholly owned subsidiary of Defendant Fremont General  
21 Credit Corporation. Defendants admit that Defendant Fremont General Credit  
22 Corporation is a wholly owned subsidiary of Defendant Fremont General  
23 Corporation. Defendants admit that Plaintiffs Scheid and McClanahan were  
24 employed by Defendant Fremont Investment & Loan in Concord, California.  
25 Defendants admit that Defendant Fremont Investment & Loan is an industrial bank  
26 and was formerly engaged in, among other businesses, the residential mortgage  
27

1 lending business in California and in numerous other states throughout the United  
2 States, usually through mortgage brokers. Except as so expressly admitted or  
3 alleged, Defendants deny each and every allegation.

4 18. Answering paragraph 18 of the Complaint, Defendants admit that  
5 Defendant Fremont General Credit Corporation is a California corporation, with its  
6 principal place of business in Brea, California. Defendants admit that Defendant  
7 Fremont Investment & Loan is a wholly owned subsidiary of Defendant Fremont  
8 General Credit Corporation. Defendants admit that Defendant Fremont General  
9 Credit Corporation is a wholly owned subsidiary of Defendant Fremont General  
10 Corporation. Except as so expressly admitted, Defendants deny each and every  
11 allegation.

12        19. Answering paragraph 19 of the Complaint, Defendants admit that  
13 Defendant Fremont General Corporation is a Nevada corporation with its principal  
14 place of business in Santa Monica, California. Defendants admit that Defendant  
15 Fremont Investment & Loan is a wholly owned subsidiary of Defendant Fremont  
16 General Credit Corporation. Defendants admit that Defendant Fremont General  
17 Credit Corporation is a wholly owned subsidiary of Defendant Fremont General  
18 Corporation. Except as so expressly admitted, Defendants deny each and every  
19 allegation.

20        20. Answering paragraph 20 of the Complaint, Defendants deny each and  
21 every allegation.

## V. FACTUAL BACKGROUND

24        21. Answering paragraph 21 of the Complaint, Defendants deny each and  
25 every allegation.

26        22. Answering paragraph 22 of the Complaint, Defendants deny each and  
27 every allegation.

1       23. Answering paragraph 23 of the Complaint, Defendants deny each and  
2 every allegation.

3       24. Answering paragraph 24 of the Complaint, to the extent that it contains  
4 legal conclusions, no response is required. Otherwise, Defendants deny each and  
5 every allegation.

6       25. Answering paragraph 25 of the Complaint, to the extent that it contains  
7 legal conclusions, no response is required. Otherwise, Defendants deny each and  
8 every allegation.

9       26. Answering paragraph 26 of the Complaint, Defendants to the extent that  
10 it contains legal conclusions, no response is required. Otherwise, Defendants deny  
11 each and every allegation.

12       27. Answering paragraph 27 of the Complaint, Defendants deny each and  
13 every allegation.

14       28. Answering paragraph 28 of the Complaint, Defendants deny each and  
15 every allegation.

16       29. Answering paragraph 29 of the Complaint, Defendants deny each and  
17 every allegation.

18       30. Answering paragraph 30 of the Complaint, Defendants deny each and  
19 every allegation.

20       31. Answering paragraph 31 of the Complaint, Defendants deny each and  
21 every allegation.

22       32. Answering paragraph 32 of the Complaint, Defendants deny each and  
23 every allegation.

24

25                   VI. COLLECTIVE ACTION ALLEGATIONS

26       33. Answering paragraph 33 of the Complaint, to the extent that it contains  
27 legal conclusions, no response is required. Otherwise, Defendants deny each and  
28 every allegation.

1       34. Answering paragraph 34 of the Complaint, to the extent it consists of  
2 statements by Plaintiffs about their intentions in filing suit, the relief they seek, or  
3 their legal conclusions, Defendants lack knowledge and information sufficient to  
4 form a belief about the truth thereof, and on that basis deny the same. Except as  
5 expressly denied or averred herein, Defendants deny each and every allegation.

6       35. Answering paragraph 35 of the Complaint, to the extent that it contains  
7 legal conclusions, no response is required. Otherwise, Defendants deny each and  
8 every allegation.

9

10                   VII. CLASS ACTION ALLEGATIONS

11       36. Answering paragraph 36 of the Complaint, to the extent it consists of  
12 statements by Plaintiffs about their intentions in filing suit, the relief they seek, or  
13 their legal conclusions, Defendants lack knowledge and information sufficient to  
14 form a belief about the truth thereof, and on that basis deny the same. Except as  
15 expressly denied or averred herein, Defendants deny each and every allegation.

16       37. Answering paragraph 37 of the Complaint, to the extent it consists of  
17 statements by Plaintiffs about their intentions in filing suit, the relief they seek, or  
18 their legal conclusions, Defendants lack knowledge and information sufficient to  
19 form a belief about the truth thereof, and on that basis deny the same. Except as  
20 expressly denied or averred herein, Defendants deny each and every allegation.

21       38. Answering paragraph 38 of the Complaint, to the extent that it contains  
22 legal conclusions, no response is required. Otherwise, Defendants deny each and  
23 every allegation.

24       39. Answering paragraph 39 of the Complaint, Defendants deny that  
25 Plaintiffs share common questions of law or fact with any appropriate class. Except  
26 as expressly denied or averred herein, Defendants deny each and every allegation.

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1       40. Answering paragraph 40 of the Complaint, Defendants deny that  
2 Plaintiffs' claims are typical of those of the alleged class. Except as expressly denied  
3 or averred herein, Defendants deny each and every allegation.

4       41. Answering paragraph 41 of the Complaint, Defendants deny that  
5 Plaintiffs are adequate class representatives. Except as expressly denied or averred  
6 herein, Defendants deny each and every allegation.

7       42. Answering paragraph 42 of the Complaint, Defendants deny that class  
8 certification is appropriate. Except as expressly denied or averred herein,  
9 Defendants deny each and every allegation.

10       43. Answering paragraph 43 of the Complaint, Defendants deny that class  
11 certification is appropriate. Except as expressly denied or averred herein,  
12 Defendants deny each and every allegation.

VIII. COLLECTIVE ACTION CLAIM  
FIRST CLAIM

## DENIAL OF OVERTIME COMPENSATION

[FLSA, 29 U.S.C. §§ 207, 211(c), 216(b)]

18       44. Answering paragraph 44 of the Complaint, Defendants re-allege and  
19 incorporate by reference its responses to paragraphs 1 through 35 of the Complaint,  
20 as if fully set forth herein.

21       45. Answering paragraph 45 of the Complaint, to the extent that it contains  
22 legal conclusions, no response is required. Otherwise, Defendants deny each and  
23 every allegation.

24        46. Answering paragraph 46 of the Complaint, Defendants deny each and  
25 every allegation.

26       47. Answering paragraph 47 of the Complaint, to the extent that it contains  
27 legal conclusions, no response is required. Otherwise, Defendants deny each and  
28 every allegation.

1       48. Answering paragraph 48 of the Complaint, Defendants deny each and  
2 every allegation.

3       49. Answering paragraph 49 of the Complaint, Defendants deny each and  
4 every allegation.

5       50. Answering paragraph 50 of the Complaint, Defendants deny each and  
6 every allegation.

7       51. Answering paragraph 51 of the Complaint, Defendants deny each and  
8 every allegation.

9

10                   IX. CLASS ACTION CLAIMS

11                   SECOND CLAIM

12                   DENIAL OF OVERTIME COMPENSATION

13                   [Cal. Labor Code §§ 510, 1194; Wage Order No. 4-2001]

14       52. Answering paragraph 52 of the Complaint, Defendants re-allege and  
15 incorporate by reference their responses to paragraphs 1 through 32 and 36 through  
16 43 of the Complaint, as if fully set forth herein.

17       53. Answering paragraph 53 of the Complaint, to the extent that it contains  
18 legal conclusions, no response is required. Otherwise, Defendants deny each and  
19 every allegation.

20       54. Answering paragraph 54 of the Complaint, Defendants deny each and  
21 every allegation.

22       55. Answering paragraph 55 of the Complaint, Defendants deny each and  
23 every allegation.

24       56. Answering paragraph 56 of the Complaint, Defendants deny each and  
25 every allegation.

26       57. Answering paragraph 57 of the Complaint, Defendants deny each and  
27 every allegation.

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1 58. Answering paragraph 58 of the Complaint, Defendants deny each and  
2 every allegation.

3       59. Answering paragraph 59 of the Complaint, to the extent it consists of  
4 statements by Plaintiffs about their intentions in filing suit, the relief they seek, or  
5 their legal conclusions, Defendants lack knowledge and information sufficient to  
6 form a belief about the truth thereof, and on that basis deny the same. Except as  
7 expressly denied or averred herein, Defendants deny each and every allegation.

### THIRD CLAIM

## FAILURE TO FURNISH ACCURATE WAGE STATEMENTS

[Cal. Labor Code § 226]

12        60. Answering paragraph 60 of the Complaint, Defendants re-allege and  
13 incorporate by reference their responses to paragraphs 1 through 32 and 36 through  
14 43 of the Complaint, as if fully set forth herein.

15        61. Answering paragraph 61 of the Complaint, to the extent that it contains  
16 legal conclusions, no response is required. Otherwise, Defendants deny each and  
17 every allegation.

18        62. Answering paragraph 62 of the Complaint, Defendants deny each and  
19 every allegation.

20       63. Answering paragraph 63 of the Complaint, to the extent it consists of  
21 statements by Plaintiffs about their intentions in filing suit, the relief they seek, or  
22 their legal conclusions, Defendants lack knowledge and information sufficient to  
23 form a belief about the truth thereof, and on that basis deny the same. Except as  
24 expressly denied or averred herein, Defendants deny each and every allegation.

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## FOURTH CLAIM

## UNLAWFUL FAILURE TO PROVIDE ADEQUATE MEAL PERIODS

[Cal. Labor Code §§ 226.7, 512; Wage Order No. 4-2001, §§ 11(A), (B)]

4       64. Answering paragraph 64 of the Complaint, Defendants re-allege and  
5 incorporate by reference their responses to paragraphs 1 through 32 and 36 through  
6 43 of the Complaint, as if fully set forth herein.

7       65. Answering paragraph 65 of the Complaint, Defendants deny each and  
8 every allegation.

9       66. Answering paragraph 66 of the Complaint, Defendants deny each and  
10 every allegation.

11       67. Answering paragraph 67 of the Complaint, to the extent it consists of  
12 statements by Plaintiffs about their intentions in filing suit, the relief they seek, or  
13 their legal conclusions, Defendants lack knowledge and information sufficient to  
14 form a belief about the truth thereof, and on that basis deny the same. Except as  
15 expressly denied or averred herein, Defendants deny each and every allegation.

## FIFTH CLAIM

## FAILURE TO REIMBURSE BUSINESS EXPENSES

[Cal. Labor Code § 2802]

20        68. Answering paragraph 68 of the Complaint, Defendants re-allege and  
21 incorporate by reference their responses to paragraphs 1 through 32 and 36 through  
22 43 of the Complaint, as if fully set forth herein.

23        69. Answering paragraph 69 of the Complaint, to the extent that it contains  
24 legal conclusions, no response is required. Otherwise, Defendants deny each and  
25 every allegation.

26           70. Answering paragraph 70 of the Complaint, Defendants deny each and  
27 every allegation.

1       71. Answering paragraph 71 of the Complaint, to the extent that it contains  
2 legal conclusions, no response is required. Otherwise, Defendants deny each and  
3 every allegation.

4 | 72. Answering paragraph 72 of the Complaint, Defendants deny each and  
5 | every allegation.

6       73. Answering paragraph 73 of the Complaint, to the extent it consists of  
7 statements by Plaintiffs about their intentions in filing suit, the relief they seek, or  
8 their legal conclusions, Defendants lack knowledge and information sufficient to  
9 form a belief about the truth thereof, and on that basis deny the same. Except as  
10 expressly denied or averred herein, Defendants deny each and every allegation.

## SIXTH CLAIM

## FAILURE TO PAY COMPENSATION

## AT TIME OF TERMINATION

[Cal. Labor Code §§ 201-203]

16       74. Answering paragraph 74 of the Complaint, Defendants re-allege and  
17 incorporate by reference their responses to paragraphs 1 through 32 and 36 through  
18 43 of the Complaint, as if fully set forth herein.

19       75. Answering paragraph 75 of the Complaint, to the extent that it contains  
20 legal conclusions, no response is required. Otherwise, Defendants deny each and  
21 every allegation.

22        76. Answering paragraph 76 of the Complaint, Defendants deny each and  
23 every allegation.

24        77. Answering paragraph 77 of the Complaint, to the extent it consists of  
25 statements by Plaintiffs about their intentions in filing suit, the relief they seek, or  
26 their legal conclusions, Defendants lack knowledge and information sufficient to  
27 form a belief about the truth thereof, and on that basis deny the same. Except as  
28 expressly denied or averred herein, Defendants deny each and every allegation.

## SEVENTH CLAIM

## UNFAIR COMPETITION LAW - RESTITUTION

[Cal. Bus. & Prof. Code §§ 17200-17208]

4       78. Answering paragraph 78 of the Complaint, Defendants re-allege and  
5 incorporate by reference their responses to paragraphs 1 through 32 and 36 through  
6 43 of the Complaint, as if fully set forth herein.

7        79. Answering paragraph 79 of the Complaint, Defendants deny each and  
8 every allegation.

9       80. Answering paragraph 80 of the Complaint, Defendants deny each and  
10 every allegation.

11        81. Answering paragraph 81 of the Complaint, to the extent it consists of  
12 statements by Plaintiffs about their intentions in filing suit, the relief they seek, or  
13 their legal conclusions, Defendants lack knowledge and information sufficient to  
14 form a belief about the truth thereof, and on that basis deny the same. Except as  
15 expressly denied or averred herein, Defendants deny each and every allegation.

16 82. Defendants deny that Plaintiffs are entitled to any of the relief requested  
17 in their Prayer for Relief.

18 83. Defendants respond to any remaining allegations in the Complaint, if  
19 there are any not responded to above, by denying each and every such allegation.

## FIRST AFFIRMATIVE DEFENSE

22 1. Plaintiffs' Complaint fails to state a claim upon which relief can be  
23 granted under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and under any  
24 applicable state law.

## SECOND AFFIRMATIVE DEFENSE

27        2. Plaintiffs' Complaint and some or all of the purported claims for relief  
28 set forth therein are barred, in whole or in part, by the applicable two-year statute of

1 limitations under the FLSA, 29 U.S.C. § 255, and by the applicable state statutes of  
2 limitation, including but not limited to California Code of Civil Procedure Sections  
3 338 and 340 and California Business and Professions Code Section 17208.

4

5 **THIRD AFFIRMATIVE DEFENSE**

6 3. Plaintiffs' Complaint and some or all of the purported claims for relief  
7 set forth therein are barred, in whole or in part, because Plaintiffs and the putative  
8 class members are exempt from payment of overtime compensation pursuant to one  
9 or more of the exemptions contained in the FLSA, 29 U.S.C. § 201 *et seq.*, including  
10 but not limited to the exemption for commission-paid employees, 29 U.S.C. § 207(i).

11

12 **FOURTH AFFIRMATIVE DEFENSE**

13 4. The claims of Plaintiffs and the putative class members, and each of  
14 them, are barred, in whole or in part, Plaintiffs and the putative class members are  
15 exempt from the wage and hour laws of California pertaining to overtime, meals,  
16 rest, record keeping and wage payment, due to, among other exclusions or  
17 exemptions, the exemption for commission sales.

18

19 **FIFTH AFFIRMATIVE DEFENSE**

20 5. Neither Plaintiffs nor the putative class members are entitled to any  
21 relief to the extent he or she forfeited his or her right to relief under the doctrines of  
22 laches or unclean hands, waived his or her rights, or is estopped from seeking the  
23 relief requested in the Complaint.

24

25 **SIXTH AFFIRMATIVE DEFENSE**

26 6. By their own conduct, acts and omissions, Plaintiffs and the putative  
27 class members, and each of them, consented to and acquiesced in the conduct of  
28 Defendants, and each of them.

## SEVENTH AFFIRMATIVE DEFENSE

2       7.     The Complaint and each purported Claim for Relief alleged therein are  
3     barred by the conduct, actions and inactions of Plaintiffs and the putative class  
4     members, and each of them, under the doctrine of ratification.

## EIGHTH AFFIRMATIVE DEFENSE

7        8. The Complaint and each Claim for Relief alleged therein are barred  
8 because Plaintiffs lack standing to bring such causes of action.

## NINTH AFFIRMATIVE DEFENSE

11       9. Plaintiffs' claims on behalf of the general public are barred, in whole or  
12 in part, because Plaintiffs are not proper representatives for members of the general  
13 public with regard to the injuries complained of.

#### TENTH AFFIRMATIVE DEFENSE

16 10. Plaintiffs' application of the California Unfair Competition Law here  
17 violates constitutional due process because it cannot reasonably be determined what  
18 conduct is required or proscribed by the Unfair Competition Law.

## ELEVENTH AFFIRMATIVE DEFENSE

11. The California Unfair Competition Law violates constitutional  
Separation of Powers clause because it purports, by statute, to improperly cede to  
private parties the powers of the executive branch of the Government, and to  
improperly delegate to the judiciary the powers of the legislative branch of the  
Government.

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1 TWELFTH AFFIRMATIVE DEFENSE

2 12. Defendants presently have insufficient knowledge or information upon  
3 which they can form a belief as to whether they may have additional, as yet  
4 unknown and unstated, affirmative defenses. Defendants reserve the right to amend  
5 their answer to assert such additional affirmative defenses in the event that discovery  
6 indicates that additional affirmative defenses are appropriate.

7

8 WHEREFORE, Defendants demand judgment enter as follows:

9 1. That Plaintiffs, and each of them, take nothing by reason of the Complaint  
10 herein;

11 2. That judgment be entered in favor of Defendants, and each of them;

12 3. For costs of suit incurred herein;

13 4. For reasonable attorneys' fees; and

14 5. For such other and further relief as this Court may deem just and proper.

15

16 DATED: January 25, 2008

BATE, PETERSON, DEACON, ZINN &  
17 YOUNG LLP

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19 By: \_\_\_\_\_ /s/  
20 LINDA VAN WINKLE DEACON

21 Attorneys for Defendants  
22 FREMONT GENERAL CORPORATION,  
23 FREMONT GENERAL CREDIT  
24 CORPORATION, and  
25 FREMONT INVESTMENT & LOAN

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